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July 28, 1998

EX PARTE OR LATE FILED

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

JUL 28 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral Ex Parte Presentation
CC Docket No. 96-45
AAD/USB File No. 98-37

Dear Ms. Salas:

On Monday, July 27, 1998, Kenneth Salomon of this office and the undersigned, counsel for the Iowa Telecommunications and Technology Commission (the "ITTC"), met with Suzanne Tetreault and Amy Nathan of the Common Carrier Bureau regarding the above-referenced matter. During the meeting, we discussed the nature of the ITTC's request, recent activity in Congress relating to this matter, the standards for determining whether an entity is a common carrier or a private carrier under existing precedent and the nature of the services provided by the Iowa Communications Network. A copy of a handout provided to Ms. Tetreault and Ms. Nathan, which describes the substantive aspects of the meeting, is attached.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office and copies are being provided to Ms. Tetreault and Ms. Nathan by the close of the business day following the conversations. Please inform me if any questions should arise in connection with this filing.

Respectfully submitted,



J.G. Harrington

JGH/vll

cc (w/o attach.): Suzanne M. Tetreault, Esq.
Amy L. Nathan, Esq.

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JUL 28 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IOWA COMMUNICATIONS NETWORK
REQUEST FOR DETERMINATION OF CARRIER STATUS
CC DOCKET NO. 96-45 ♦ AAD/USB FILE NO. 98-37

- **The issue in this proceeding is whether ICN should be treated as a common carrier or a private carrier for purposes of Section 254(h).**

In the *Universal Service Order*, the Commission held that only telecommunications carriers can receive support under Section 254(h) and that common carriers are telecommunications carriers. There is no dispute that ICN provides telecommunications (*i.e.*, it provides its customers the ability to transmit information of their own choosing from one point to another). Because ICN offers telecommunications over its own facilities, it cannot be an aggregator. Therefore, ICN must be either a common carrier or a private carrier.

- **ICN does not have the characteristics of a private carrier.**

Private carriers choose their customers and individually negotiate the terms and conditions on which service is provided. By law, ICN must serve all eligible customers and in practice no customer is required to use ICN's services. Similarly, ICN offers service on standard terms and conditions, which do not change from customer to customer. ICN provides service on this basis to hundreds of customers in Iowa, including both private and public entities. Thus, ICN cannot be a private carrier, and accordingly, must be a common carrier.

- **Every restriction cited by the LECs exists in common carrier services**

Opponents of the request have argued that ICN imposes limitations on its services that are not consistent with common carrier status. This is incorrect: Every restriction that opponents have cited exists in current common carrier services. For instance, tariffs routinely limit the customers to whom service is available — residential lines cannot be used by businesses and various tariffed video services (such as channel service) are available only to video programmers. There also are carriers, including the “carriers’ carriers” described in the *Universal Service Order*, that have limited their clientele to a specific category of customer. Common carriers also impose usage restrictions, such as prohibiting use of Dial-It and 900 services for adult entertainment or services that would tend to harm a carrier's reputation. These types of restrictions are even more widespread among transportation common carriers, which routinely limit the nature of the goods they will carry.

- **The public interest strongly favors grant of the ICN request**

Especially in rural Iowa, ICN sometimes is the only source for advanced services, so failure to grant ICN's request will mean that some schools and libraries will be unable to obtain any support at all. While certain rural carriers have claimed they would provide such services, to date no other carrier actually has offered services comparable to those now being provided by the ICN. In addition, absent grant of ICN's request, some Iowa schools and libraries will be eligible for support (*i.e.*, those that get service via ICN-resold facilities) and some will not (*i.e.*, those that get service via ICN's own facilities), even though the service they receive is identical, which means that schools and libraries would be treated differently even though they receive identical service from ICN.

- **Grant of the request will facilitate competition**

If the Commission grants the request, Iowa schools, libraries and rural health care institutions will have the widest possible range of choices for the telecommunications services they need. ICN provides competition to other telecommunications carriers that offer similar services. Moreover, the schools, libraries and rural health care providers that use ICN's services are free to choose any service provider, including a competing LEC. In rural areas, ICN may be the only entity that is likely to compete with the incumbent LEC. The availability of ICN's services, consequently, will help to reduce the costs of telecommunications services, especially the costs of advanced services that are increasingly important to modern education.